The Manitoba Human Rights Commission
7th Floor - 175 Hargrave Street
Winnipeg, Manitoba R3C 3R8

Canada Post Canadian Publications
Mail Sales Product Agreement
No. 1400452

Human Rights From Manitoba

A Newsletter Of Human Rights Developments In Manitoba

Volume 1, Number 11, Fall, 2000

Inside this issue: *Why is this woman smiling? (Page 2). The first years of The Manitoba Human Rights Commission (P. 3). The Commission today (Pp. 4-5). How complaints are processed (Pp. 6-7). New Commissioners appointed (Pp. 8-9). The latest public seminars (P.10). And...lots of news...a free poster... and more!*

2008-03663/

Different but equal

Georgina Pelletier was hired by the Commission through the STEP program in partnership with the Manitoba Metis Federation. Her goal? To teach human rights to elementary school students. The lessons, *We Are Different But Equal*, were taught at Margaret Park School in Winnipeg, to students in grades three through six.

"There's a strong need to stop racism by starting young," Georgina says. She believes children learn discrimination from their parents, based on her own experiences growing up in Manitoba as an Aboriginal person.

To prepare her lessons, Georgina used this Commission's resources, other Commissions', and received helpful information from the Stella Mission.

Linda Shapiro made the traditional Aboriginal dress worn by Georgina in the pictures on the front page and this page. The overall brown colour of the dress represents hide skin. The ribbons in white, black, yellow and red represent the four nations: White, Black, Yellow and Red.

For younger students, Georgina emphasized respecting people's feelings, and dealt with name-calling and unequal treatment. With older students, the subjects included understanding and accepting differences and cultural diversity.

As part of her lessons, Georgina used a smudge bowl and other traditional methods for purifying herself and cleansing negative feelings.

The Human Rights Journalism Award

For close to ten years, the Commission co-sponsored with the Winnipeg Press Club the ***Human Rights Journalism Award***. The first award went to Gordon Sinclair for a series of columns he wrote in the ***Winnipeg Free Press***. Since then, annual Awards have been given to media outlets large and small throughout Manitoba. The Journalism Award served its purpose. Now we are working with the Community Legal Education Association (CLEA) and the Canadian Human Rights Commission on the new ***Manitoba Human Rights Commitment Award***. The ***Award*** includes a $1,000 prize to a person or organization to further training and involvement in advancing human rights issues in Manitoba.

The inaugural award will be presented at the CLEA Human Rights Day Conference Luncheon on **December 8th**. This year the conference will focus on ***human rights in the justice system***. Mark your calendar to attend! For more information, please see the announcement on Page 10.

Equality yesterday

WOMEN'S NEWS

Plans To Change Habits If Not Hearts

The first Board of Commissioners, circa March, 1972. Front row, left to right: Irene McKay, Caroline Cramer Q.C., Beatrice Brigden. Back row, l-r: Herbert Platte, Angus Spence, Attorney General Al Mackling, Benoni Francois Cyr, Frank Rehwald. Not present: Brian Koshul.

Integrated Job Ads Help Men And Women: Cramer

Caroline Cramer today.

On March 19, 1971 then Attorney-General Al Mackling announced the names of the first Board of Commissioners of the brand new Manitoba Human Rights Commission. Caroline Cramer Q.C. was the first Chairperson. An attorney then, she remains in private practice today, but has also maintained a long history of public service.

She is not certain why she was appointed, except that in the early 70's "it was time to appoint a woman to something." Cramer had extensive involvement in community and human rights issues.

From the day it opened its doors, "women's issues" dominated the Commission's work. "Women gravitated to the Commission like a magnet. Of our first complaints, 75% were on women's issues." One of the first cases was the issue of splitting newspaper job ads into "male" and ""female". At the time, human rights news was often relegated to the "Women's News", as can be seen in the headline above. The ***Free Press*** and other media have certainly grown over the years!

In the beginning, resources were almost nonexistent. When it started, the Commission had only an Executive Director and two investigators for the entire Province. There were no regional offices.

In those first years, when human rights laws were in their infancy, the Commission emphasized mediation over legal procedures. Formal complaints were not often taken. When an important issue could not be resolved informally, the Commission asked the Attorney-General to prosecute. Today, we ask the Attorney-General to appoint an Adjudicator.

The early emphasis on informal negotiation went a long way to resolving many problems. Cramer said she was under no illusion that the legislation alone would make anything positive happen. "We needed to do a lot of educating," she said. As an example, she recalled a store which offered a "Jew Me Down" sale. The store owner said he was only using a typical colloquialism, and did not understand why it was offensive. "Dialoguing with him resolved that problem," Cramer said.

She said the first years were difficult because discriminatory attitudes were (and are) so "ingrained into the culture. We'd sit down to bring about an understanding, and sometimes they saw the light."

Equality rises every day

by Dianna Scarth
Executive Director

The Commission has two broad areas within its jurisdiction. One area is the enforcement of ***The Human Rights Code*** through investigation, mediation and adjudication. The second is the promotion of greater public understanding of human rights issues through educational programs.

Board of Commissioners

The Board of Commissioners reviews all complaints and establishes Commission policies. The rich variety of life experiences, education and employment backgrounds of Board members contribute in a very significant way to the Commission's work. Four new Board members were appointed recently. We gratefully acknowledge the contributions made to the Commission by the four Board members who retired in May: Philip Lee, Robert Bone, Lionel Moore and Piara Sharma.

Those of us who work in the human rights field are fortunate to be involved in an area of law that is relatively new (most Human Rights Commissions were established in the 1970's) and that is constantly evolving.

Human Rights Commissions have unique roles. They not only reflect social change through their programs and policies, but they also can bring about social change, often through the complaint process. The creation of new rights can start with Complainants who frequently demonstrate courage and determination by bringing forward their human rights complaints. Some Complainants may be seeking a personal remedy, but others want only to protect the rights of others. Both possibilities exist when a complaint is filed.

Examples of change

A single complaint may create sweeping changes in our society. For example, two complaints filed with the Manitoba Commission in the late 1980's resulted in landmark decisions by the Supreme Court of Canada in the areas of sexual harassment and the rights of pregnant women. The impact of the *Brooks v. Canada Safeway* and *Janzen v. Platy Enterprises* decisions illustrate in a very forceful way how individual women who filed complaints ultimately changed the "human rights landscape" in Canada forever.

Similarly, in the early 1990's a complaint filed with our Commission by Mr. Chris Vogel raised the issue of discrimination based on sexual orientation. By the time the final Adjudicator's decision supporting the rights of same-sex couples to receive certain benefits was handed down in 1998, cases dealing with rights for same-sex couples were being reported across the country. Public opinion had changed dramatically since the early 1990's. Such changes of attitude in the "court of public opinion" make it easier to enforce court decisions that expand human rights protections.

Two new decisions

Within the last year, the Supreme Court has handed down two very significant decisions which set new guidelines regarding the obligations of employers and service providers to "reasonably accommodate" individuals who

have been treated differentially based on their being covered by one of the protected grounds. Whenever a standard or rule is imposed which has the effect of excluding a person or group on the basis of a protected characteristic, an employer or service provider must carefully assess the individual's abilities, and any accommodation must be as inclusive as possible, short of an undue hardship.

Breast-feeding

Similar issues can arise at the same time for Commissions across the country. For example, recent cases in British Columbia, Ontario and Nova Scotia have dealt with the issue of breast-feeding. A Manitoba Adjudicator heard a similar complaint in late September. A number of Commissions have begun to work collaboratively to develop proactive educational programs to clarify the law in this area.

Education programmes

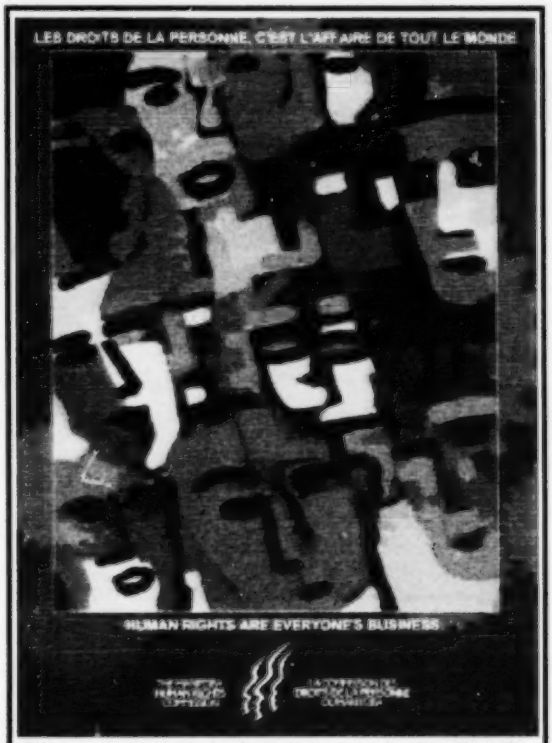
The Commission has developed seminars whose goal is to prevent discrimination through education. These seminars (*please see Page 10*) currently form the foundation of the Commission's public education activities. In the coming year, a new priority will be to establish programmes within the education system, particularly for young children. The best opportunities to reinforce positive attitudes which respect the differences between peoples occur before the age of twelve.

One the greatest challenges faced by our Commission has been to reduce the time taken to resolve complaints. The new options of conciliation and mediation have streamlined procedures—nearly forty percent of all complaints are now resolved through our mediation and pre-complaint conciliation programs. The average time spent on investigations has also been greatly reduced.

Reach new groups

The Commission is striving to reach groups in the community which have not previously utilized our services fully. As an example, a staff person will soon consult with Aboriginal organizations in Winnipeg to develop new programs and services.

Commission staff are committed to developing new approaches and techniques to meet changing needs and conditions. We are fortunate to be involved in activities which can have a positive impact on people's lives. And we must always remember the philosophical principles underlying the legislation which the Commission has been entrusted to implement——*to reduce discrimination and work towards equality of opportunity for all Manitobans.*



This new poster from the Commission was developed jointly by Human Rights Commissions across the country to underscore the value and importance of diverse groups in our communities. Want a free copy? Please contact us, using the information on Page 10.

Processing Complaints

Over the past few years, the Commission has developed new methods of providing Manitobans with the best service possible. These days, issues are often resolved informally, with a minimum of time lost and a maximum of cooperation among the parties involved. This helps achieve our goals, which include increasing satisfaction among Complainants and Respondents with our processes.

First contact

When people first approach the Commission with a concern, an Intake Officer assesses their information. For example, is the issue covered by ***The Code***? Is it within deadlines?

Generally, a complaint alleges a person was treated differently because he/she was--*or was* ***thought*** *to be*--a member of a "group" (for example, not hiring a person because she is of Aboriginal descent or because she was *thought* to be.) There are twelve protected "groups" under ***The Code.*** Groups include age, religion, gender and pregnancy.

Complaints can also allege a failure to accommodate a person's needs, if those needs were based on being part of a "group." Callers are told where to get help if we do not have jurisdiction.

Roughly one in ten intake calls results in a file being opened. The Intake Officer assesses the case: should an attempt be made to resolve the issue before a complaint is even drafted? The criteria includes whether the Complainant will try a quick negotiation process, the complexity of the issues, and whether negotiation might be unduly strained (for example, in some situations where sexual harassment is alleged).

About half the time, the Officer makes a pre-complaint phone call to the "Respondent" to see if the complaint can be resolved without a formal complaint. Close to half of these attempts are successful, and the file is closed.

If either party is not willing to try a voluntary settlement, or if the facilitated negotiations break down, a formal written complaint is then prepared. The Respondent is then informed that a complaint is on the way.

Mediation

After the complaint has been served, and if the Complainant is willing to voluntarily resolve the issues, our Mediation Team contacts the Respondent. Is mediation possible? In about one quarter of the cases, the Respondent is willing to try. Our mediations are successful in the vast majority of cases.

As a result of our early resolution initiatives, only about half of the new complaints now proceed to investigation.

Investigation

Investigations are targeted to be completed on average within six months. After the complaint is assigned, an investigating Officer then phones both parties to introduce himself/herself. At that

time, the Officer can provide advice and information.

Once the Respondent's reply is received and reviewed, the Officer may contact the Respondent to ask for more information. On occasion a reply lacks information important to the Respondent's defence, or does not address key issues.

Voluntary withdrawal

After the reply has been received, all of the available information is reviewed with the Complainant. At that point, the Complainant may be satisfied with the Respondent's explanation, and withdraw the complaint. However, in most cases the reply alone does not resolve all the issues.

After obtaining the Complainant's response to the reply, the Officer can then determine what additional information is needed to discover what happened. We attempt to gather evidence which will allow the Board of Commissioners to make the best possible determination, given the options available under ***The Code***.

Investigations often involve a few key witnesses to interview and documents to read. The law requires that to prove a complaint's allegations, the evidence must demonstrate that it is *probable* the law was broken (proof beyond a reasonable doubt is *not* required).

During the course of the investigation, it is always possible to resolve the complaint through voluntary negotiation, if both sides are willing.

Written report

A report summarizing the complaint, the positions of the parties, the available evidence and a recommendation is prepared and sent in advance to both the Complainant and Respondent. Any rebuttal received in response to the report is reviewed and changes made if appropriate. If the report is revised, the new version is sent to both parties. If not, the original report *and* the response(s) to it are presented to the Board of Commissioners for consideration.

Commissioners

The Board of Commissioners consists of ten people, including a Chair and Vice Chair. Commissioners are appointed to the Board and its executive positions by Orders-in-Council for three years, and may be renewed. Normally terms are staggered so about one third of the Board comes up for reconsideration every year.

Board Commissioners come from a wide variety of backgrounds, occupations and ages (Please see Pages 8 and 9 for more). The knowledge they bring to the Commission is supplemented by information from staff and the Commission's counsel.

It is the responsibility of the Commissioners to determine, based on the evidence available, whether proceedings should continue on a complaint. The Board does not actually decide whether the law was broken. The Board can decide to terminate work on a complaint, or if further action on the complaint is required, the Board can direct that mediation be undertaken.

Adjudication

In cases where mediation has failed or will likely fail, where there is a sufficient public interest in the issues involved, and where the evidence is solid, the Commissioners usually refer the complaint to the Attorney General, and request Adjudication. Adjudication is, in effect, a one person tribunal. The Adjudicator, appointed by the Attorney General, subpoenas witnesses, hears their testimony under oath and reviews other evidence. The Adjudicator will then make a decision based on all of the evidence presented. The Adjudicator can order a restoration to the Complainant of what he/she lost as a result of the discrimination. The Complainant can also be awarded general damages, and there is the option of awarding a penalty against the Respondent in severe cases.

Adjudicators can establish precedents which become part of the case law.

An Adjudicator's decision is final, but can be reviewed on certain grounds, for example on questions of errors in law. If any of the parties involved have such grounds, the matter can proceed to the courts. Some cases have made it all the way to the Supreme Court of Canada. The entire court and adjudication process is handled by the Commission for the Complainant, including costs.

Processing Complaints

Over the past few years, the Commission has developed new methods of providing Manitobans with the best service possible. These days, issues are often resolved informally, with a minimum of time lost and a maximum of cooperation among the parties involved. This helps achieve our goals, which include increasing satisfaction among Complainants and Respondents with our processes.

First contact

When people first approach the Commission with a concern, an Intake Officer assesses their information. For example, is the issue covered by ***The Code***? Is it within deadlines?

Generally, a complaint alleges a person was treated differently because he/she was--*or was* ***thought*** *to be*--a member of a "group" (for example, not hiring a person because she is of Aboriginal descent or because she was *thought* to be.) There are twelve protected "groups" under ***The Code***. Groups include age, religion, gender and pregnancy.

Complaints can also allege a failure to accommodate a person's needs, if those needs were based on being part of a "group." Callers are told where to get help if we do not have jurisdiction.

Roughly one in ten intake calls results in a file being opened. The Intake Officer assesses the case: should an attempt be made to resolve the issue before a complaint is even drafted? The criteria includes whether the Complainant will try a quick negotiation process, the complexity of the issues, and whether negotiation might be unduly strained (for example, in some situations where sexual harassment is alleged).

About half the time, the Officer makes a pre-complaint phone call to the "Respondent" to see if the complaint can be resolved without a formal complaint. Close to half of these attempts are successful and the file is closed.

If either party is not willing to try a voluntary settlement, or if the facilitated negotiations break down, a formal written complaint is then prepared. The Respondent is then informed that a complaint is on the way.

Mediation

After the complaint has been served, and if the Complainant is willing to voluntarily resolve the issues, our Mediation Team contacts the Respondent. Is mediation possible? In about one quarter of the cases, the Respondent is willing to try. Our mediations are successful in the vast majority of cases.

As a result of our early resolution initiatives, only about half of the new complaints now proceed to investigation.

Investigation

Investigations are targeted to be completed on average within six months. After the complaint is assigned, an investigating Officer then phones both parties to introduce himself/herself. At that

time, the Officer can provide advice and information.

Once the Respondent's reply is received and reviewed, the Officer may contact the Respondent to ask for more information. On occasion a reply lacks information important to the Respondent's defence, or does not address key issues.

Voluntary withdrawal

After the reply has been received, all of the available information is reviewed with the Complainant. At that point, the Complainant may be satisfied with the Respondent's explanation, and withdraw the complaint. However, in most cases the reply alone does not resolve all the issues.

After obtaining the Complainant's response to the reply, the Officer can then determine what additional information is needed to discover what happened. We attempt to gather evidence which will allow the Board of Commissioners to make the best possible determination, given the options available under *The Code*.

Investigations often involve a few key witnesses to interview and documents to read. The law requires that to prove a complaint's allegations, the evidence must demonstrate that it is *probable* the law was broken (proof beyond a reasonable doubt is *not* required).

During the course of the investigation, it is always possible to resolve the complaint through voluntary negotiation, if both sides are willing.

Written report

A report summarizing the complaint, the positions of the parties, the available evidence and a recommendation is prepared and sent in advance to both the Complainant and Respondent. Any rebuttal received in response to the report is reviewed and changes made if appropriate. If the report is revised, the new version is sent to both parties. If not, the original report *and* the response(s) to it are presented to the Board of Commissioners for consideration.

Commissioners

The Board of Commissioners consists of ten people, including a Chair and Vice Chair. Commissioners are appointed to the Board and its executive positions by Orders-in-Council for three years, and may be renewed. Normally terms are staggered so about one third of the Board comes up for reconsideration every year.

Board Commissioners come from a wide variety of backgrounds, occupations and ages (Please see Pages 8 and 9 for more). The knowledge they bring to the Commission is supplemented by information from staff and the Commission's counsel.

It is the responsibility of the Commissioners to determine, based on the evidence available, whether proceedings should continue on a complaint. The Board does not actually decide whether the law was broken. The Board can decide to terminate work on a complaint, or if further action on the complaint is required, the Board can direct that mediation be undertaken.

Adjudication

In cases where mediation has failed or will likely fail, where there is a sufficient public interest in the issues involved, and where the evidence is solid, the Commissioners usually refer the complaint to the Attorney General, and request Adjudication. Adjudication is, in effect, a one person tribunal. The Adjudicator, appointed by the Attorney General, subpoenas witnesses, hears their testimony under oath and reviews other evidence. The Adjudicator will then make a decision based on all of the evidence presented. The Adjudicator can order a restoration to the Complainant of what he/she lost as a result of the discrimination. The Complainant can also be awarded general damages, and there is the option of awarding a penalty against the Respondent in severe cases.

Adjudicators can establish precedents which become part of the case law.

An Adjudicator's decision is final, but can be reviewed on certain grounds, for example on questions of errors in law. If any of the parties involved have such grounds, the matter can proceed to the courts. Some cases have made it all the way to the Supreme Court of Canada. The entire court and adjudication process is handled by the Commission for the Complainant, including costs.

New Commissioners

Kemlin Nembhard

Kemlin graduated from the University of Winnipeg with a B.A., majoring in Environmental Studies, Social and Economic Studies, and Geography. She is currently a Women's Health Educator for the *Canadian Women's Health Network*. She is on the Board of ***Horizons***, and is an active volunteer with CHO!CES. She is very involved in the social justice movement, especially on anti-racism and women's issues. Kemlin also works on alternative economics issues.

Roberta Frederickson

Roberta, a Shop Steward with the Canadian Auto Workers, is a long time employee with the Fort Garry Hotel in Winnipeg. She has extensive experience in workplace issues. Her interests include human rights, and she looks forward to teaching CAW members in the Winnipeg area about human rights law and related issues. Roberta has a daughter.

Janet Baldwin

Janet taught law at the University of Manitoba for 31 years. She continues as a Senior Scholar with the Faculty of Law. Janet was involved in equity and diversity issues at the University, where she served as Chair of the *President's Advisory Council on Women* and Director of the *Women's Secretariat*. The University's sexual harassment and human rights policies were revised by her. Currently, Janet serves as a member of the United Way's Community Development Committee. She is married, with two teenaged daughters.

Yvonne Peters

Yvonne has a B.A. and an LL.B. from the University of Saskatchewan, and a B.S.W. from the University of Regina. She practices as an equality rights lawyer in Winnipeg, providing legal consultation and advice to unions, community groups, human rights organizations, the corporate sector and governments. Her community work includes serving as a member of the *Women's Health Clinic* Board of Directors, and as a member of the Equality Rights Panel of the *Court Challenges Program*.

Current Commissioners

Kenneth Filkow Q.C. is in his third term as Chairperson of the Commission. He combines his work as Chairperson with an active law practice as a senior partner of *D'Arcy and Deacon* in Winnipeg. The emphasis of his practice is advice and counsel to business corporations. He is a Past President of *CASHRA*, the association of Human Rights Commissions across Canada.

Alfredo (Fred) Arrojado, an Insurance Consultant with Zurich Life Canada, holds a B.A. in Business Administration. He is the Managing director with CTICS, an immigration consulting company. He is also an accredited Community Legal Intermediary with CLEA. Fred is Past President of the Philippine Association of Manitoba and is a Council Member of MEBAC. He helps new immigrants in their settlement needs.

Randal Smith Q.C. was called to the Bar in 1980. He is Counsel for the Aboriginal Law Group of the Federal Department of Justice. Randal is a Past President of *The Manitoba Bar Association.* Mr. Smith has also served as an Adjudicator under The Canada Labour Code, and as a Chair of the *Canada Pension Plan Review Tribunal.* He regularly writes articles on legal issues.

Cheryl Dumont is the Vice-Chairperson. She is the Director of the Manitoba Metis Federation's Human Resources Training and Development Department. She has been a municipal councillor with the R.M. of Saint-Laurent since 1989, has served on many municipal committees and has represented the municipality on many boards. She is also involved with the *Societe Franco-Manitobaine.*

Dianne Vandewater obtained her Bachelor of Arts Degree in 1990 from the University of Manitoba, majoring in French. She resides in Winnipeg and is currently employed at Faneuil Group as a Quality Assurance Agent. She is active in her church and in community events.

Dr. Amarjit S. Arneja was born in Punjab, India and migrated to Winnipeg in 1973. He is an Associate Professor of Medicine at the University of Manitoba and is active in clinical practice, teaching and research. He is past newsletter editor of the Manitoba Tennis Association, and has been a Director of the Association for several years. At present, he is a Director and Trustee of the India Association of Manitoba. He is involved in cultural, community and temple organizations.

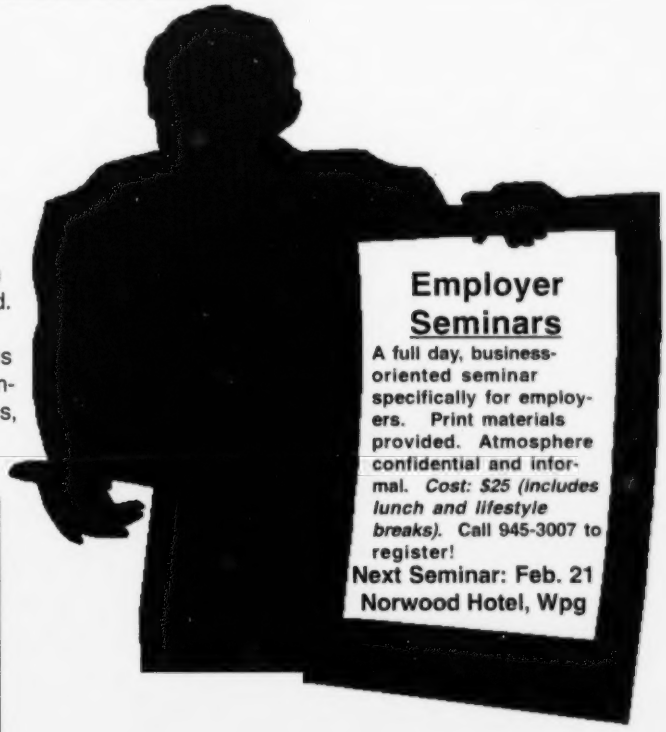
Where do Commissioners come from?

Not from under a cabbage leaf. There are ten Commissioners, appointed by Orders-in-Council for three year terms. About one third of the Commission comes up for reappointment or replacement every year. Commissioners generally come from a wide variety of occupations and backgrounds to ensure that the greatest level possible of expertise and experience is represented on the Board.

As we go to press, we anticipate additional appointments to the Board of Commissioners. Any new appointments will be provided in the next issue of this newsletter.

Human rights issues for non-profit organizations

This half-day seminar provides general information about human rights law and how it is administered. In addition, the seminar material is specifically designed to assist non-profit organizations. Topics include what questions can be asked when screening volunteers, developing anti-harassment policies, responding to a human rights complaint, and reasonable accommodation issues.


Employer
Seminars
A full day, business-oriented seminar specifically for employers. Print materials provided. Atmosphere confidential and informal. Cost: $25 (includes lunch and lifestyle breaks). Call 945-3007 to register!
Next Seminar: Feb. 21
Norwood Hotel, Wpg

The Inaugural Manitoba Human Rights Commitment Award

The Manitoba Human Rights Commitment Award is a joint project of The Manitoba Human Rights Commission, The Canadian Human Rights Commission and The Community Legal Education Association. This year's Award will recognize a group or individual who has undertaken activities which have advanced human rights issues, either within the justice system or by using the justice system.

Nominations for the Award close on November 8, 2000. Anyone interested in nominating a person or group, or who has questions about the Award, should contact CLEA at 943-2382.

In recognition of December 10--Human Rights Day--the first Award will be presented on December 8 at the Community Legal Education Association's Human Rights Conference Luncheon, *On The Edge*. Tickets for the luncheon are still available!

Reasonable accommodation in the workplace

This three and a half hour seminar considers when employers have a duty to take reasonable steps to accommodate employees. In what circumstances does this duty arise, and what rights and obligations does an employer have when it does? Practical advice is provided to employers to help them.

Harassment in the workplace

It is good business for employers to develop and implement anti-harassment policies. Canadian courts and tribunals require employers to provide employees with a harassment-free workplace, and may assess significant financial penalties if they do not.
This half day seminar focuses on what conduct constitutes harassment under ***The Code*** and how employers can minimize their liability and develop a harassment free workplace.

Human Rights From Manitoba *is a publication of The Manitoba Human Rights Commission. Editor: Victor Schwartzman. Our sincere thanks to Translation Services (Department of Culture, Heritage and Tourism) for its excellent service. Write us at: 7th Floor 175 Hargrave Street Wpg MB R3C 3R8. In Winnipeg, phone 945-3007, toll free 888-884-8681. In Northern Manitoba, 627-8270 (The Pas), toll free: 1-800-676-7084. For Western Manitoba, 726-6261 (Brandon), toll free: 1-800-201-2551. Our website: www.gov.mb.ca/hrc. Want to be on our mailing list? Please call today!*